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11                  dba St. Joseph's Hospital & Medical Center*

12                  UNITED STATES DISTRICT COURT

13                  FOR THE DISTRICT OF ARIZONA

14                  Erika Braaksma, an individual,

15                  No.

16                  Plaintiff,

17                  (Superior Court of Arizona, Maricopa  
18                  County, Case No. CV2021-015779)

19                  v.  
20                  Dignity Health, a California nonprofit  
21                  corporation, d/b/a St. Joseph's Hospital  
22                  & Medical Center,

23                  DEFENDANT'S NOTICE OF  
24                  REMOVAL PURSUANT TO 28 U.S.C.  
25                  §§ 1332(a)(1), 1441, & 1446

26                  Defendant.

27                  (Jury Trial Demanded)

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**TO THE CLERK OF THE ABOVE-ENTITLED COURT AND PLAINTIFF:**

29                  PLEASE TAKE NOTICE that Defendant Dignity Health dba St. Joseph's Hospital  
30                  & Medical Center ("Defendant") hereby removes this civil action from the Superior Court  
31                  of the State of Arizona for the County of Maricopa to the United States District Court for  
32                  the District of Arizona, pursuant to 28 U.S.C. §§ 1332(a)(1), 1441, and 1446. A short,  
33                  plain statement of the grounds for removal is set forth below.

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1       **I. STATE COURT RECORD**

2       1. Pursuant to 28 U.S.C. § 1446(a) and LRCiv 3.6(b), copies of all documents  
 3 previously filed<sup>1</sup> in the state court matter are attached hereto as separate exhibits:

- 4              ▪       Summons to Defendant Dignity Health, **Exhibit A**;
- 5              ▪       Summons to Defendant Barrow Neurological Foundation<sup>2</sup>, **Exhibit**  
                    **B**;
- 6              ▪       Certificate of Compulsory Arbitration, **Exhibit C**;
- 7              ▪       Complaint, **Exhibit D**;
- 8              ▪       Affidavit of Service for Defendant Dignity Health, **Exhibit E**;
- 9              ▪       Affidavit of Service for Defendant Barrow Neurological  
 10             Foundation, **Exhibit F**;
- 11             ▪       First Amended Complaint, **Exhibit G**;
- 12             ▪       Defendant Dignity Health's Acceptance of Service, **Exhibit H**;
- 13             ▪       Undersigned's Notice of Appearance, **Exhibit I**;

14       2. Pursuant to LRCiv 3.6(b), the Supplemental Civil Cover Sheet is attached  
 15 hereto as **Exhibit J** and the most recent state court docket is attached hereto as **Exhibit**  
 16 **K**.

17       3. Pursuant to LRCiv 3.6(b), counsel for Defendant Dignity Health verifies  
 18 that true and accurate copies of all pleadings and other documents filed in the state court  
 19 proceeding have been filed with this Notice of Removal. [Declaration of Amelia Esber,  
 20 Esq., attached as **Exhibit L**].

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25       <sup>1</sup> Plaintiff filed a Civil Cover Sheet in this matter, which appears on the docket. However,  
 26       Defendant does not have access to the Civil Cover Sheet and was told by the Superior  
 27       Court Clerk that Civil Cover Sheets are now being maintained on a confidential basis.  
 28       [Exh. L at ¶ 3].

2       <sup>2</sup> This entity was removed as a defendant in this action with Plaintiff's First Amended  
 28       Complaint.

1       **II. BACKGROUND**

2       4. On October 7, 2021, Plaintiff Erika Braaksma (“Plaintiff”) filed the  
 3 Complaint against Defendants Dignity Health and Barrow Neurological Foundation in  
 4 the Superior Court of the State of Arizona for the County of Maricopa, titled *Erika*  
 5 *Braaksma v. Barrow Neurological Foundation et al.*, Case No. CV2021-015779.

6       5. Plaintiff served Defendant Dignity Health with copies of the Summons and  
 7 Complaint on or about October 18, 2021. [Exh. E].

8       6. On October 25, 2021, Plaintiff filed the First Amended Complaint which  
 9 removed Defendant Barrow Neurological Foundation as a party and made this matter  
 10 removable to federal court pursuant to 28 U.S.C. §§ 1441 and 1446. [*Compare* Exh. D  
 11 and Exh. G].

12       7. Undersigned counsel accepted service of the First Amended Complaint on  
 13 behalf of Defendant Dignity Health on October 28, 2021. [Exh. H].

14       8. Plaintiff’s First Amended Complaint alleges Defendant Dignity Health  
 15 violated the Arizona Employment Protection Act (“AEPA”), A.R.S. § 23-1501. [*See*  
 16 *generally* Exh. G].

17       9. Plaintiff seeks actual and compensatory damages for lost wages, lost  
 18 benefits, emotional distress, and damage to professional reputation. [Exh. G at ¶ 65].

19       **III. GROUNDS FOR REMOVAL**

20       10. A defendant may remove to federal court “any civil action brought in a State  
 21 court of which the district courts of the United States have original jurisdiction.” 28  
 22 U.S.C. § 1441(a).

23       11. This Court has original jurisdiction over this action pursuant to 28 U.S.C. §  
 24 1332(a)(1), which provides that federal courts have jurisdiction over civil actions “where  
 25 the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and  
 26 costs, and is between . . . citizens of different States.” Both qualifications are met in this  
 27 action.

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1           **A. There is Complete Diversity Between the Parties.**

2       12. As alleged in the First Amended Complaint, Plaintiff resides in Maricopa  
 3 County, Arizona. [Exh. G at ¶ 2].

4       13. In accordance with 28 U.S.C. § 1332(c)(1), “a corporation shall be deemed  
 5 to be a citizen of every State and foreign state by which it has been incorporated and of  
 6 the State or foreign state where it has its principal place of business.”

7       14. As alleged in the First Amended Complaint and confirmed via sworn  
 8 Declaration, Defendant Dignity Health is incorporated in the State of California. [Exh. G  
 9 at ¶ 3; Declaration of Melanie Margeson, attached as **Exhibit M**, at ¶ 4].

10      15. A corporation’s principal place of business is where “a corporation’s  
 11 officers direct, control, and coordinate the corporation’s activities. It is the place that  
 12 Courts of Appeals have called the corporation’s ‘nerve center.’” *Hertz Corp. v. Friend*,  
 13 559 U.S. 77, 92-93 (2010). The U.S. Supreme Court in *Hertz Corp.* emphasized that the  
 14 test is one of “administrative simplicity,” and federal courts may accept an affidavit as  
 15 sufficient proof of a corporation’s principal place of business. *Id.* at 94; *see Thompson v.*  
 16 *Intel Corp.*, 2012 U.S. Dist. LEXIS 126311, at \*61, No. CIV 12-0620 JB/LFG (D. N.M.  
 17 Aug. 27, 2012).

18      16. Federal courts, including within the District of Arizona, have consistently  
 19 found that sworn statements by corporate employees are competent proof of a  
 20 corporation’s principal place of business. *See, e.g. Bradshaw Home Med. Equip., LLC v.*  
*Hospice Family Care*, 2013 U.S. Dist. LEXIS 169722, at \*13-14, No. 13-CV-8218-PCT-  
 21 PGR (D. Ariz. Dec. 2, 2013) (citing to multiple jurisdictions where courts have held that  
 22 a corporation’s principal place of business can be proven by a declaration of a corporate  
 23 officer).

25      17. Defendant Dignity Health’s corporate headquarters and principal place of  
 26 business are in San Francisco, California, where its corporate officers and directors direct,  
 27 control, and coordinate the corporation’s business activities. [Exh. M at ¶¶ 5-7].

1       18. Although Dignity Health operates six health care entities in Arizona, the  
 2 vast majority of its operations are in California. [Exh M. at ¶ 7.]

3       19. Pursuant to 28 U.S.C. § 1332(a)(1), complete diversity exists because  
 4 Plaintiff is a citizen of Arizona and Defendant Dignity Health is a citizen of California.

5       **B. The Amount in Controversy Exceeds \$75,000.**

6       20. A notice of removal “need include only a plausible allegation that the  
 7 amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee Basin*  
 8 *Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014). A court may determine whether  
 9 the threshold amount is satisfied based on “a reasonable reading of the value of the rights  
 10 being litigated.” *See Kenneth Rothschild Tr. v. Morgan Stanley Dean Witter*, 199 F. Supp.  
 11 2d 993, 1001 (C.D. Cal. 2002) (citing *Angus v. Shiley, Inc.*, 989 F.2d 142, 146 (3d Cir.  
 12 1993)) (“the amount in controversy is not measured by the low end of an open-ended  
 13 claim, but rather by reasonable reading of the value of the rights being litigated”).

14       21. As stated by the U.S. Supreme Court, “a defendant’s notice of removal need  
 15 include only a plausible allegation that the amount in controversy exceeds the  
 16 jurisdictional threshold. Evidence establishing the amount is required by § 1446(c)(2)(B)  
 17 **only when** the plaintiff contests, or the court questions, the defendant’s allegation.” *Dart*  
 18 *Cherokee*, 574 U.S. at 89 (emphasis added).

19       22. Plaintiff alleges Defendant Dignity Health retaliated against her in violation  
 20 of the AEPA, and seeks actual and compensatory damages for lost wages, lost benefits,  
 21 emotional distress, and damage to professional reputation. She also seeks an award of  
 22 attorneys’ fees. [Exh. G at ¶ 65].

23       23. Pursuant to Maricopa County Local Rule 3.10(a), cases in which the  
 24 amount in controversy does not exceed \$50,000 are subject to mandatory arbitration.

25       24. Plaintiff’s Certificate of Compulsory Arbitration indicates the case is not  
 26 subject to the mandatory arbitration provisions of Rule 72, meaning that the amount in  
 27 controversy is at least \$50,000. [Exh. C].

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1       25. According to the Maricopa County Clerk of Court, Plaintiff identified this  
 2 matter as being subject to Arizona's Tier 2 discovery limits, meaning she is seeking  
 3 between \$50,000 and \$300,000 in damages. *See Rule 26.2(c)(3), Ariz. R. Civ. P.* [Exh. L  
 4 at ¶ 4].

5       26. Plaintiff's employment with Defendant Dignity Health ended on March 26,  
 6 2021. [Exh. M at ¶ 10].

7       27. Plaintiff's rate of pay at the time of her termination was \$47.04 per hour.  
 8 [Exh. M at ¶ 11].

9       28. As of the date of this filing, Plaintiff has been unemployed by Defendant  
 10 Dignity Health for approximately 34 weeks, which equates to \$63,974.40 in potential  
 11 alleged lost wages, which will exceed \$75,000 by the end of the year.<sup>3</sup> This does not  
 12 include all the other alleged harm she has suffered and for which she believes she is  
 13 entitled to compensation.

14       29. Plaintiff alleges that she "has suffered and continues to suffer significant  
 15 damages due to lost income, benefits, and professional opportunities." [Exh. G, ¶ 44.]

16       30. Plaintiff also claims that Defendant's conduct "caused her to suffer  
 17 emotional distress and anxiety" and she is seeking damages for such emotional distress.  
 18 [Exh. G, ¶ 45.]

19       31. Plaintiff further requests damages for reputational harm, as well as  
 20 attorneys' fees and costs. [Exh. G, ¶ 66 and Prayer for Relief.]

21       32. Pursuant to 28 U.S.C. § 1332(a)(1), this case is removable because  
 22 complete diversity exists and the amount in controversy exceeds \$75,000.

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<sup>3</sup> Defendant does not concede that Plaintiff is entitled to damages for lost wages, or to any damages at all.

#### **IV. REMOVAL IS TIMELY AND PROPER.**

33. This Notice of Removal is timely under 28 U.S.C. § 1446(b) because it is filed within 30 days of Defendant's receipt of Plaintiff's Complaint: Plaintiff served Defendant the Complaint and Summons on or about October 18, 2021.<sup>4</sup> [Exh. E].

34. As required by 28 U.S.C. § 1446(d) and LRCiv 3.6(a), Defendant Dignity Health certifies a copy of this Notice has been filed with the Clerk of the Arizona Superior Court.

35. This Notice is signed pursuant to Rule 11 of the Federal Rules of Civil Procedure, in accordance with 28 U.S.C. § 1446(a) and LRCiv 3.6(a).

36. By filing this Notice of Removal, Defendant Dignity Health does not waive any defenses to Plaintiff's claims.

WHEREFORE, Defendant removes this action in its entirety from the State Court of Arizona, Maricopa County, to the United States District Court for the District of Arizona, and requests that this Court take any and all further action as is just or appropriate.

DATED this 17<sup>th</sup> day of November, 2021.

## GREENBERG TRAURIG, LLP

By: /s/ Amelia A. Esber

Lindsay J. Fiore

Amelia A. Esber

*Attorneys for Defendant Dignity Health dba St. Joseph's Hospital and Medical Center*

<sup>4</sup> Pursuant to 28 U.S.C. § 1446(b)(3), a defendant may file a notice of removal within 30 days of service of an amended pleading that first makes the case removable. Here, this matter could not be removed until Plaintiff filed her First Amended Complaint and omitted Defendant Barrow Neurological Foundation as a party. Defendant Barrow Neurological Foundation is a citizen of Arizona, and prevented removal because complete diversity did not exist. Defendant Dignity Health accepted service of the First Amended Complaint on October 28, 2021, meaning it has additional time to remove this case. However, out of an abundance of caution, Defendant Dignity Health files this Notice of Removal as if the 30-day period ran from service of the original Complaint.